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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,911	03/05/2002	Hugo Jean Marie Demeyere	8449M	6590

27752 7590 01/27/2004

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CINCINNATI, OH 45224

EXAMINER

HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/090,911

**Applicant(s)**

DEMEYERE ET AL.

**Examiner**

John R. Hardee

**Art Unit**

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 8-12, 16, 17, 19-23 and 26-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-15, 18, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 090602.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group I in Paper No. 121903 is acknowledged. The traversal is on the ground(s) that the searches for all the groups will be coextensive in view of the novel elements of the inventions. This is not found persuasive because it presupposes that all of the inventions are patentable, and the searches are not, in fact, coextensive. In particular, Group I requires a suds suppressor which does not appear in Group II. The search for Group I will not pick up compositions according to Group II which do not contain a suds suppressor. Conversely, a search for Group II will not pick up components which meet the broader limitations of Group I, but do meet the narrower limitations of Group I.

The requirement is still deemed proper and is therefore made FINAL.

2. Applicant traverses the species restriction on the grounds that the examiner has not demonstrated that an undue burden would be imposed by search and examination of all of the inventions. This is not persuasive because search and examination of four separate and distinct inventions is burdensome on its face. The election requirement is made FINAL.

3. Claims 19-23 and 26-29 are withdrawn from consideration by the examiner as being drawn to inventions non-elected with traverse.

4. In the absence of percentage limitations, the examiner cannot determine which of the claims are read upon by the elected composition. Accordingly, the examiner assumes that they all do, except claims 10-12, 16 and 17, which clearly

Art Unit: 1751

do not. These claims are withdrawn from consideration by the examiner as being drawn to embodiments non-elected with traverse, no generic claims having been found allowable. The claims have been searched and examined only to the extent that they read on the elected composition, as that was found obvious over the prior art.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor

Art Unit: 1751

and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-9, 13-15, 18, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/57259. The reference discloses fabric care compositions comprising a modified cellulase. Surfactant is typically present at a most preferable range of 1% to 30% by weight (p. 18, 2<sup>nd</sup> para). Cationic softeners are preferred, and include coconut dimethyl hydroxyethyl ammonium chloride, which is disclosed as especially preferred (p 20, bottom). Typical softening components include distearoyloxyethyl dimethyl ammonium chloride (p. 21, 12)). Total cationic content is preferably about 1-8% (p. 23, 2<sup>nd</sup> para.) Most preferred nonionics are alcohols of 8-18 carbons (preferably averaging 10 carbons) with 2-10 ethoxy groups (p. 26, 2<sup>nd</sup> para.) Addition of silicone antifoaming agents, perfume and HCl in amounts which meet the limitations of applicant's elected composition, are exemplified. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's elected composition with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in a surfactant composition. The person of ordinary skill in the surfactant art would expect the recited

Art Unit: 1751

compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990). Applicant's recitation of 90, 95 or 99% suds reduction is drawn to determination of the suds-reducing-effective amount of a disclosed suds reducer, and amounts to routine optimization.

9. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (571) 272-1316.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



John R. Hardee  
Primary Examiner  
January 5, 2004